

STATE OF MICHIGAN
COURT OF APPEALS

In re A. D. PHILLIPS, Minor.

UNPUBLISHED
November 17, 2015

No. 327212
Wayne Circuit Court
Family Division
LC No. 03-421649

Before: STEPHENS, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

Respondent-mother appeals as of right the April 6, 2015 order terminating her parental rights to the minor child, A.D. We affirm.

I. BACKGROUND

Mother gave birth to A.D. on September 1, 2014, at Henry Ford Hospital in Detroit. Child Protective Services (CPS) became involved when the hospital social worker informed CPS on September 8, 2014, that a meconium screen for the child returned positive results for marijuana. The Department of Health and Human Services (DHHS) filed an original permanent custody petition, based on mother having her parental rights terminated to six other children, and requested the court take jurisdiction of the child on September 8, 2014. A preliminary hearing on the petition was held on September 9, 2014, where mother waived probable cause to jurisdiction and the petition was authorized. On November 10, the petition was adjudicated with mother's stipulation on the record that her six prior terminations established a statutory ground for termination under MCL 712A.19b(3)(g), (j) and (l). Mother requested a separate disposition hearing to determine whether termination of her parental rights would be in the best interests of A.D. Mother also requested, and the court ordered, that a Clinic for Child Study be completed for the best interests hearing. The court ordered that mother, as well as her two adult daughters, Starkesha and Aleashia Hill, be interviewed as part of the study. Clinician Robert Geiger interviewed mother and her daughters as ordered. His reports were admitted without objection.

The best interests hearing was held on March 12, 2015. The court decided that it was in A.D.'s best interests to terminate mother's parental rights. The court recognized that mother did have a period of compliance with substance abuse treatment and visitation, but that mother's prior history, tracing back to 1998 was just compelling. The court noted that the child was born positive for marijuana at birth and that there was a period during the proceedings where mother

was noncompliant with screens. The court found that mother's history of non-compliance both before and after the child's birth justified not giving mother additional time to rectify her issues.

II. STANDARD OF REVIEW

This Court reviews a circuit court's best interests determination for clear error. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

III. TERMINATION OF PARENTAL RIGHTS

Mother argues that the trial court's best interests decision was erroneously based on one positive marijuana drug screen and her prior CPS history. Mother also argues that the trial court failed to consider her participation in treatment services, her compliance in visiting with A.D., and that Aleashia and Starkesha were willing to help her take care of A.D. We disagree with each of mother's contentions.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home[.]" *In re Olive/Metts Minors*, 297 Mich App at 41-42 (internal citations omitted).

Contrary to mother's position, the trial court did acknowledge her period of compliance with substance abuse treatment and that she attended all visits with A.D. The court stated that it had no doubt that mother loved A.D. The trial court also found however, that mother's compliance period was brief, that for a substantial period she did not screen at all, and that those missed screens were legally presumed to be positive. The Court noted that mother's parental rights to her other children were terminated partly for untreated substance abuse issues. It was not error for the court to consider mother's history in light of her then current noncompliance to determine that it was not in A.D.'s best interests for mother to retain her parental rights. Neither Aleashia nor Starkesha testified at the hearing, but Geiger gave testimony regarding their potential involvement with A.D. The court ordered that Aleashia and Starkesha be interviewed by Geiger for the specific purpose of evaluating whether each could be a support system for mother and considered his testimony in this regard. While mother is critical of the basis for Geiger's conclusions, no objection was made to his testimony and conclusion that neither could provide sufficient support to enable mother to safely parent A.D. The court credited his findings.

The court's best interests analysis was supported by a preponderance of the evidence. A.D. came into care September 8, 2014. Mother's parental rights were terminated March 12,

2015. Foster care worker Serita Arrowood testified that mother provided negative drug screens from the end of September 2014 to the end of November 2014. According to Arrowood, mother did not provide any screens from the end of November 2014 until February 2015 when she was ordered to screen in-court and tested positive for marijuana. Mother's period of sobriety was short-lived, not lasting more than two months. This pattern of compliance followed by noncompliance however was consistent with Geiger's clinical observation that mother's periods of commitment are temporary with a likely return to abusing substances. The court was not required to provide mother with additional time to achieve abstinence. Because the DHHS sought termination at initial disposition based on mother's prior terminations, MCL 712A.19a(2)(c), reunification services were not required. *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Mother's failure to benefit from substance abuse services in the cases involving her other children and her unwillingness to abstain from using substances while pregnant with A.D. and while A.D. was in care are indicators of mother's inability to be able to provide for A.D.'s best interests in the future.

Aleashia and Starkesha were individually interviewed by Geiger by order of the court. Aleashia reported that she was in a supervised independent living placement. Starkesha lived with her mother, but intended to start her own family with the father of her unborn child. While both Aleashia and Starkesha were willing to help, neither was a permanent or stable support system for mother. A.D.'s needs for permanency and stability were not met by the arrangement of mother relying on her adult children to help her parent their youngest sibling. Aleashia reported to Geiger that she would refer problems of her mother's parenting of A.D. to Starkesha. Starkesha reported that the ultimate responsibility to parent A.D. was with their mother. In any case, the evidence shows that no one has accepted full parenting responsibility of A.D.

Mother also argues that the trial court erred in failing to consider relative placement as a best interests factor against termination. Again, we disagree.

Under MCL 712A.19a(6)(a), a court is not required to terminate parental rights when "[t]he child is being cared for by relatives." "[B]ecause 'a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a),' the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012) quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.* quoting *In re Mason*, 486 Mich at 163-165.

In this case, A.D. was not in the care of relatives at the time of termination proceedings and no relatives were identified for her care. Indeed, A.D. had been in a non-relative foster care placement since her birth and release from Henry Ford Hospital. The court's initial inquiry as to the availability of relative care began on September 9, 2014, the date of the preliminary hearing and A.D.'s removal. At that time, CPS worker Lori Preston testified that she asked mother about available relatives for placement and contacted a maternal aunt who stated she could not have A.D. in her home because it was in need of repairs. There is no record of any other relative being identified for A.D.'s placement. Mother erroneously argues that both Starkesha and Aleashia were willing to have A.D. placed with them and that the court ignored them as a

placement option. Starkesha and Aleashia however, were never identified as primary caretakers, but rather as a support system for mother. There is also no evidence in the record of Starkesha or Aleashia coming forward and requesting A.D. to be placed with them. Mother argues on appeal that the court failed to consider a guardianship option alternative to termination, but the record indicates that when mother's counsel was asked whether he was advocating for a guardianship, he answered no. "An attorney speaks for his client." *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 302; 731 NW2d 29 (2007). Contrary to mother's understanding, there is evidence that Starkesha would not have wanted to be A.D.'s guardian. When interviewed by Geiger, Starkesha reported that her intent was to establish a family of her own with the father of her child and that the ultimate responsibility for caring for A.D. was with mother. Similarly, Aleashia reported that she was busy with school and activities, and looked to Starkesha and their mother as the caretakers of A.D. Even if Starkesha or Aleashia were interested in having A.D. placed in their care, a relative placement does not by itself avoid termination. A trial court can still "terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests[.]" *In re Olive/Metts*, 297 Mich App at 43. Because A.D. was not in a relative placement at the time termination proceedings were initiated and no relative was identified for the court to consider for placement, the court did not err in not considering relative placement as a best interests factor in its decision to terminate mother's parental rights.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray